Doc Code: AP.PRE.REQ

OPAP
JUL 0 7 2010
PATENT & TRADEMARK OFFICE

| PRE-APPEAL BRIEF REQUEST FOR REVIEW | Docket Number (Optional) LSN-36-2011 Confirmation No. 9938 |
|---|---|

| | Application Number 10/593,442 | Filed September 19, 2006 |
|---|---|---|
| | First Named Inventor BRISCOE | |
| | Art Unit 2416 | Examiner Omar J. Ghowrwal |

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
    Note:  No more than five (5) pages may be provided.

I am the

☐ Applicant/Inventor

☐ Assignee of record of the entire interest.  See 37 C.F.R. §3.71.  Statement under 37 C.F.R. §3.73(b) is enclosed (Form PTO/SB/96).

☒ Attorney or agent of record        25,640
                                                 (Reg. No.)

☐ Attorney or agent acting under 37 C.F.R. §1.34.
   Registration number if acting under 37 C.F.R. §1.34 _____

_Larry S. Nixon_
Signature

Larry S. Nixon
Typed or printed name

703-816-4002
Requester's telephone number

July 7, 2010
Date

NOTE:  Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  Submit multiple forms if more than one signature is required, see below.*
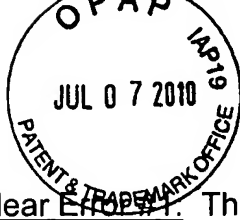
☒  *Total of   1   Form is submitted.

1656653

<u>Clear Error</u>. The Examiner alleges anticipation by Cain, but relies upon Cain's source node 1 for functionality required in intermediate node 3.

Applicant's independent claims 1 and 8 require an <u>intermediate</u> node to itself possess routing decision capability. The Examiner alleges Cain's intermediate node 3 to anticipate claims 1 and 8. However, the Examiner's own discussion of Cain reveals that it is <u>not</u> intermediate node 3, but instead source node 1, that makes relevant routing decisions.

In Cain, the only node that could be said to make a decision regarding the selection of a manner of treatment for data to be forwarded (i.e., corresponding in any way to the "selecting" decision taken by the "selecting" means of applicants' claim 1) is Cain's "source node 1". Cain's source node 1 cannot, however, make such a decision in the same way as applicants' claim 1 requires of an intermediate node precisely because, as Cain's node 1 is the "source node" for the path in question, it does not (and cannot) "*receive data from an upstream node*" on the path in question, nor does it (nor can it) "*receive path characterization information from an upstream node*" on the path in question. Thus, Cain's node 1 cannot derive the necessary "*information indicative of a characteristic of a portion of the path between the intermediate node and the receiver node*" in the manner as required by applicants' claim 1 (i.e., deriving it from path characterization information received from an <u>upstream</u> node on the path in question). In short, Cain's source node 1 does not have an upstream node on the path in question from which to receive such path characterization information.

Applicants' independent claims relate respectively to an "*<u>intermediate</u> node...*" (claim 1) and to a "*method for controlling the treatment <u>by an intermediate node</u> of data*

1

1656679

*traversing a path across a data network..."* (claim 8). <u>All</u> of the features of claim 1 are, therefore, specifically defined as features of the "intermediate node", and <u>all</u> of the steps of claim 8 are specifically defined as steps performed by the "intermediate node".

The Examiner has provided no substantive comment explaining why he did not agree with applicants' analysis of November 9, 2009. The Examiner's own analysis fails to show that Cain's intermediate node 3 has <u>all</u> of the elements of the intermediate node of applicants' claim 1 – in part because the Examiner's analysis involves finding only <u>some</u> of these elements in Cain's intermediate node 3 – and <u>others</u> in Cain's <u>source node 1</u>.

Referring only to claim 1, the Examiner confirms that the path he is referring to is path "1-3-5-4". He then explains how he believes Cain's intermediate node 3 has elements corresponding to the *"means for receiving data from an upstream node"* and the *"means for receiving path characterization information from an upstream node..."* as defined in applicants' claim 1.

Some of the inconsistency in the Examiner's analysis becomes apparent, however, at the final and critical part of the argumentation relating to the *"means arranged to select...a preferred manner of treatment for data to be forwarded"* and particularly to the *"means for forwarding data to a downstream node according to said preferred manner"* as defined in applicants' claim 1.

In the Examiner's argumentation (i.e., in the penultimate sub-paragraph of page 4 of the last office action), the Examiner is still referring to the forwarding of data on <u>the whole of</u> path "1-3-5-4". This, of course, is the path from Cain's "source node 1", and thus includes a link <u>upstream</u> of the intermediate node 3. However, intermediate node 3

2

cannot be said to have made the "selecting" decision in relation to the manner of treat-ment in question for data to be forwarded on that path (i.e. path "1-3-5-4"), because the path in question is a path that started underscore{upstream of itself}.

The only Cain node that could possibly have been involved in any "selecting" decision in respect of a path including the link from source node 1 to intermediate node 3 and the only node that could have been involved in any "forwarding" of data according to the selected "preferred manner" is Cain's source node 1. This is, of course, directly contrary to the claimed invention.

The Examiner's analysis of claim 1 relies on matching some of the elements of the applicants' claim 1 intermediate node with elements of Cain's intermediate node 3 – but others with elements of Cain's source node 1. This is, therefore, a fundamentally flawed analysis.

A corresponding analysis in relation to applicants' claim 8 was not even given. However, such would similarly fall short, as it also would have to rely on matching only some of the steps performed by the applicants' claim 8 intermediate node with steps performed by Cain's intermediate node 3 – leaving other required steps that could only be performed by Cain's source node 1.

Clear Error #2. The Examiner equates "said path characterization information" to what is received by Cain's intermediate node 3.

The antecedent for "said path characterization information " in applicants' claim 4 is found in parent claim 1 as characterizing the entire actual real world across a data network from a provider node to a receiver node (i.e., based on information fed back

3

1656679

from the receiver node to the provider node in the real world). By contrast, the QoS request relied upon by the Examiner (e.g., the QoS metric in the RREQP message) comes only as an upstream request (expressing a source node desire) – not based on any feedback information from the receiver or destination node (i.e., relating to actual source-to-receiver node path).

Clear Error #3. The Examiner has not articulated any rationale to support the rejection of claims 8, 11 and 13.

Clear Error #4. The Examiner selectively combines features from Cain and Saadawi even though these references teach mutually incompatible routing processes.

The Examiner recognizes that Cain does not teach an intermediate node capable of selecting a preferred downstream path. For this admitted deficiency, the Examiner relies upon Saadawi's Forward Control Packet (FCP), wherein locally stored weights of neighboring nodes are used at an intermediate node to effect selection of a next node based on the FCP generated by a source node (apparently also without the benefit of feedback from the destination node). However, one typically does not just willy-nilly selectively change a network routing protocol in this manner (without hindsight). The Examiner asserts a motivation for this change "to aid in determining the next node to send an FCP to". However, the Examiner does not identify any FCP in Cain's system – or any perceived need in the context of the Cain system to seek assistance in determining the next node (whether for an actual propagating message or an FCP). The fact is that Cain and Saadawi teach entirely different routing protocols and it would be illogical to make changes in Cain based upon Saadawi's teaching.

4

1656679